

## ESTUARY RESTORATION ACT OF 2000

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APRIL 4, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

### R E P O R T

[To accompany H.R. 1775]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1775) to catalyze restoration of estuary habitat through more efficient financing of projects and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Estuary Restoration Act of 2000”.

#### SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to promote the restoration of 1,000,000 acres of estuary habitat by 2010;
- (2) to promote the restoration of fresh water estuary habitat;
- (3) to develop strategies to obtain national and regional objectives for estuary habitat restoration;
- (4) to foster coordination of Federal, State, and community estuary habitat restoration programs, plans, and studies;
- (5) to establish effective estuary habitat restoration partnerships among public agencies at all levels of government and between the public and private sectors;
- (6) to promote efficient financing of estuary habitat restoration activities; and
- (7) to develop and enhance monitoring and research capabilities to ensure that estuary habitat restoration efforts are based on sound scientific understanding.

### SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) **COUNCIL.**—The term “Council” means the Estuary Habitat Restoration Council established by section 5.

(2) **DEGRADED ESTUARY HABITAT.**—The term “degraded estuary habitat” means estuary habitat where natural ecological functions have been impaired and normal beneficial uses have been reduced.

(3) **ESTUARY.**—The term “estuary” means a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes a fresh water estuary.

(4) **ESTUARY HABITAT.**—

(A) **IN GENERAL.**—The term “estuary habitat” means the physical, biological, and chemical elements associated with an estuary, including the complex of physical and hydrologic features and living organisms within the estuary and associated ecosystems.

(B) **INCLUDED HABITAT.**—The term “estuary habitat” includes salt and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, maritime forests, coastal grasslands, tidal flats, natural shoreline areas, shellfish beds, sea grass meadows, kelp beds, river deltas, river and stream banks under tidal influence, and beds of submerged aquatic vegetation.

(5) **ESTUARY HABITAT RESTORATION ACTIVITY.**—

(A) **IN GENERAL.**—The term “estuary habitat restoration activity” means an activity that results in improving degraded estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape.

(B) **INCLUDED ACTIVITIES.**—The term “estuary habitat restoration activity” includes—

- (i) the reestablishment of physical features and biological and hydrologic functions;
- (ii) except as provided in section 4(b)(3), the cleanup of contamination related to the restoration of estuary habitat;
- (iii) the control of nonnative and invasive species;
- (iv) the reintroduction of native species; and
- (v) other activities that improve estuary habitat.

(6) **ESTUARY HABITAT RESTORATION PROJECT.**—The term “estuary habitat restoration project” means an estuary habitat restoration activity under consideration or selected by the Secretary, in accordance with this Act, to be carried out or receive technical assistance under this Act.

(7) **ESTUARY HABITAT RESTORATION STRATEGY.**—The term “estuary habitat restoration strategy” means the estuary habitat restoration strategy developed under section 7.

(8) **ESTUARY MANAGEMENT OR HABITAT RESTORATION PLAN.**—The term “estuary management or habitat restoration plan” means any plan for restoration of degraded estuary habitat that—

- (A) was developed by, or in cooperation with, a public body with the substantial participation of appropriate public and private stakeholders; and
- (B) reflects a community-based planning process.

(9) **FRESH WATER ESTUARY.**—The term “fresh water estuary” means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with the Great Lakes and within which the Great Lakes water is measurably diluted with water derived from land drainage.

(10) **GREAT LAKES REGION.**—The term “Great Lakes region” means the region consisting of the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

(11) **GULF REGION.**—The term “Gulf region” means the region consisting of the States of Florida, Alabama, Mississippi, Louisiana, and Texas.

(12) **MIDDLE ATLANTIC REGION.**—The term “Middle Atlantic region” means the region consisting of the States of New Jersey, Delaware, Maryland, Pennsylvania, and Virginia and the District of Columbia.

(13) **NORTHEAST REGION.**—The term “Northeast region” means the region consisting of the States of Maine, New Hampshire, New York, Massachusetts, Rhode Island, and Connecticut.

(14) **NORTHWEST REGION.**—The term “Northwest region” means the region consisting of the States of Oregon, Washington, and Alaska.

(15) **REGIONAL COUNCIL.**—The term “Regional Council” means a Regional Council of the Estuary Habitat Restoration Council established by section 6.

(16) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(17) SOUTHEAST REGION.—The term “Southeast region” means the region consisting of the States of North Carolina, South Carolina, Georgia, and Florida and the territories of Puerto Rico and the Virgin Islands.

(18) SOUTHWEST REGION.—The term “Southwest region” means the region consisting of the States of California and Hawaii and the territories of American Samoa, Guam, and the Northern Mariana Islands.

(19) STATE.—The term “State” means a State, the District of Columbia, or a territory in the Gulf, Great Lakes, Middle Atlantic, Northeast, Northwest, Southeast, or Southwest Region.

#### SEC. 4. ESTUARY HABITAT RESTORATION PROGRAM.

(a) ESTABLISHMENT.—There is established an estuary habitat restoration program under which the Secretary may carry out estuary habitat restoration projects in accordance with the requirements of this Act.

(b) SELECTION OF PROJECTS.—

(1) FACTORS TO BE TAKEN INTO ACCOUNT.—In selecting estuary habitat restoration projects to be carried out under this Act, the Secretary shall, in consultation with the Council, take into account the following factors:

(A) The recommendations of the Council.

(B) Whether the project meets the criteria specified in the estuary habitat restoration strategy.

(C) The technical merit and feasibility of the project.

(D) Whether the non-Federal interests proposing the project provide satisfactory assurances that they will have adequate personnel, funding, and authority to carry out and properly maintain the project.

(E) Whether the project will encourage increased coordination and cooperation among Federal, State, and local government agencies.

(F) Whether the project fosters public-private partnerships and uses Federal resources to encourage increased private sector involvement, including consideration of the amount of private funds or in-kind contributions for an estuary habitat restoration activity.

(G) Whether the project includes a monitoring plan that is consistent with standards for monitoring developed under section 9 to ensure that short-term and long-term restoration goals are achieved.

(H) Other factors that the Secretary determines to be reasonable and necessary for consideration.

(2) PRIORITY.—In selecting estuary habitat restoration projects to be carried out under this Act, the Secretary shall give priority consideration to a project if, in addition to meeting the selection criteria under paragraph (1)—

(A) the project is part of an estuary management or habitat restoration plan; or

(B) the project occurs within a watershed in which there is a program being carried out that addresses sources of pollution and other activities that otherwise would re-impair the restored habitat.

(3) EXCLUDED PROJECTS.—An estuary habitat restoration project shall not be eligible to be carried out under this Act if the project—

(A) constitutes mitigation required under any Federal or State law for the adverse effects of an activity regulated or otherwise governed by Federal or State law; or

(B) constitutes restoration for natural resource damages required under any Federal or State law.

(c) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of an estuary habitat restoration project carried out under this Act shall not exceed 65 percent of such cost.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of an estuary habitat restoration project carried out under this Act shall include lands, easements, rights-of-way, and relocations and may include services, or any other form of in-kind contribution determined by the Secretary to be an appropriate contribution equivalent to the monetary amount required for the non-Federal share of the activity.

(d) INTERIM ACTIONS.—

(1) IN GENERAL.—Pending completion of the estuary habitat restoration strategy to be developed under section 7, the Secretary may take interim actions to carry out an estuary habitat restoration activity.

(2) **FEDERAL SHARE.**—The Federal share of the cost of an estuary habitat restoration activity before the completion of the estuary habitat restoration strategy shall not exceed 25 percent of such cost.

(e) **COOPERATION OF NON-FEDERAL PARTNERS.**—

(1) **IN GENERAL.**—The Secretary shall not select an estuary habitat restoration project until a non-Federal interest has entered into a written agreement with the Secretary in which the non-Federal interest agrees to provide all lands, easements, rights-of-way, and relocations and any other elements the Secretary determines appropriate under subsection (c)(2).

(2) **NONPROFIT ENTITIES.**—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(b)), for any project undertaken under this Act, the Secretary may, after coordination with the appropriate State and local officials responsible for the political jurisdiction in which a project would occur, allow a nonprofit entity to serve as the non-Federal interest.

(3) **MAINTENANCE AND MONITORING.**—A cooperation agreement entered into under paragraph (1) shall provide for maintenance and monitoring of the estuary habitat restoration project to the extent the Secretary determines necessary.

(f) **DELEGATION OF PROJECT IMPLEMENTATION.**—In carrying out this Act, the Secretary may delegate project implementation to another Federal department or agency on a reimbursable basis if the Secretary determines such delegation is appropriate.

#### **SEC. 5. ESTABLISHMENT OF ESTUARY HABITAT RESTORATION COUNCIL.**

(a) **COUNCIL.**—There is established a council to be known as the “Estuary Habitat Restoration Council”.

(b) **DUTIES.**—The Council shall be responsible for—

(1) reviewing project proposals forwarded to the Council from the Regional Councils and making recommendations concerning such proposals in accordance with section 8(c);

(2) developing a national strategy for restoration of estuary habitat; and

(3) periodically reviewing the effectiveness of the national strategy in meeting the purposes of this Act and, as necessary, updating the national strategy.

(c) **MEMBERSHIP.**—The Council shall be composed of 13 members as follows:

(1) The Secretary (or the Secretary’s designee).

(2) The Under Secretary for Oceans and Atmosphere of the Department of Commerce (or the Under Secretary’s designee).

(3) The Administrator of the Environmental Protection Agency (or the Administrator’s designee).

(4) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service (or the Secretary’s designee).

(5) The Secretary of Agriculture (or the Secretary’s designee).

(6) The Secretary of Transportation (or the Secretary’s designee).

(7) One representative from each of the 7 Regional Councils, selected by the Regional Council and appointed by the Secretary.

(d) **APPOINTMENT AND TERMS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), members of the Council under subsection (c)(7) shall be appointed for a term of 3 years.

(2) **INITIAL MEMBERS.**—Of the members first appointed under subsection (c)(7)—

(A) 3 shall be appointed for a term of 1 year;

(B) 2 shall be appointed for a term of 2 years; and

(C) 2 shall be appointed for a term of 3 years.

(3) **VACANCIES.**—Whenever a vacancy occurs among members of the Council appointed under subsection (c)(7), the Secretary shall appoint an individual in accordance with such subsection to fill that vacancy for the remainder of the applicable term.

(e) **PROHIBITION OF COMPENSATION.**—Members of the Council may not receive compensation for their service as members of the Council.

(f) **CHAIRPERSON.**—The chairperson shall be elected by the Council from among its members for a 3-year term, except that the first elected chairperson may serve a term of fewer than 3 years.

(g) **CONVENING OF COUNCIL.**—

(1) **FIRST MEETING.**—The Secretary shall convene the first meeting of the Council not later than 60 days after the date of enactment of this Act for the purpose of electing a chairperson.

(2) **ADDITIONAL MEETINGS.**—The chairperson shall convene additional meetings of the Council as often as appropriate to ensure that this Act is fully carried out, but not less often than annually.

(h) **COUNCIL PROCEDURES.**—The Council shall establish procedures for voting, the conduct of meetings, and other matters, as necessary.

(i) **PUBLIC PARTICIPATION.**—Meetings of the Council shall be open to the public. The Council shall provide notice to the public of such meetings.

(j) **COORDINATOR.**—The Secretary shall appoint a Coordinator who shall—

- (1) be educated and experienced in estuary protection, restoration, and program management;
- (2) be responsible, with assistance from the Secretary, for facilitating consideration of estuary habitat restoration projects by the Council and Regional Councils and otherwise assisting the Council and Regional Councils in carrying out their responsibilities under this Act; and
- (3) be compensated with funds available under section 10(b).

#### **SEC. 6. ESTABLISHMENT OF REGIONAL COUNCILS.**

(a) **REGIONAL COUNCILS.**—There are established 7 Regional Councils of the Estuary Habitat Restoration Council. Each Regional Council shall represent a different one of the following regions:

- (1) The Gulf region.
- (2) The Great Lakes region.
- (3) The Middle Atlantic region.
- (4) The Northeast region.
- (5) The Northwest region.
- (6) The Southeast region.
- (7) The Southwest region.

(b) **MEMBERSHIP.**—The Governor of each State in the region represented by the Regional Council may appoint one representative to the Regional Council. The Regional Council also may include such other members as the Governors shall jointly designate.

(c) **NONVOTING MEMBERSHIP.**—A Regional Council may appoint nonvoting members of the Regional Council from relevant agencies, programs, and organizations, including—

- (1) relevant State agencies and regional and field staff of relevant Federal agencies; and
- (2) representatives of relevant coastal and estuary programs, such as those developed under the Coastal Zone Management Program or the National Estuary Program.

(d) **CHAIRPERSON.**—A Regional Council shall select a chairperson from among its members.

(e) **DUTIES.**—A Regional Council shall be responsible for—

- (1) developing a regional strategy that is consistent with the national strategy for the review of project proposals within the region;
- (2) establishing technical criteria for project proposals, which are consistent with the goals and priorities of the regional and national strategies;
- (3) soliciting, evaluating, and forwarding to the Council proposals for estuary habitat restoration projects;
- (4) periodically reviewing the effectiveness of the regional strategy toward meeting the goals and objectives of the national strategy and recommending and implementing improvements; and
- (5) selecting from among the voting membership a person to represent the Regional Council on the Council.

(f) **TECHNICAL SUPPORT.**—Technical support may be provided to a Regional Council by regional and field staff of the Corps of Engineers, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the United States Fish and Wildlife Service, the Department of Agriculture, and the Department of Transportation. The Secretary shall coordinate the provision of such assistance.

(g) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon the request of a Regional Council, the Secretary may provide to the Regional Council the administrative support services necessary for the Regional Council to carry out its responsibilities under this Act.

#### **SEC. 7. ESTUARY HABITAT RESTORATION STRATEGY.**

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Council, in consultation with State and other non-Federal entities, including nonprofit entities, as appropriate, shall develop an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits derived from estuary habitat restoration projects and to foster the coordination of Federal and non-Federal activities related to restoration of estuary habitat.

(b) **INTEGRATION OF ESTUARY HABITAT RESTORATION PLANS, PROGRAMS, AND PARTNERSHIPS.**—In developing the estuary habitat restoration strategy, the Council shall—

(1) conduct a review of—

(A) estuary management or habitat restoration plans; and

(B) Federal programs established under other laws that authorize funding for estuary habitat restoration activities;

(2) develop a set of proposals to maximize the incentives for the creation of new public-private partnerships to carry out estuary habitat restoration projects and to use Federal resources to encourage increased private sector involvement in estuary habitat restoration activities; and

(3) ensure that the estuary habitat restoration strategy is developed and will be implemented in a manner that is consistent with the estuary management or habitat restoration plans.

(c) **ELEMENTS TO BE CONSIDERED.**—Consistent with the requirements of this section, the Council in the development of the estuary habitat restoration strategy, shall consider—

(1) the contributions of estuary habitat to—

(A) providing healthy ecosystems in order to support—

(i) wildlife, including endangered and threatened species, migratory birds, and resident species of an estuary watershed; and

(ii) fish and shellfish, including commercial and recreational fisheries;

(B) surface and ground water quality and quantity, and flood control;

(C) outdoor recreation and other direct and indirect values; and

(D) other areas of concern that the Council determines to be appropriate for consideration;

(2) the estimated historic losses, estimated current rate of loss, and extent of the threat of future loss or degradation of each type of estuary habitat; and

(3) the most appropriate method for selecting a balance of smaller and larger estuary habitat restoration projects.

(d) **ADVICE.**—The Council shall seek the advice of experts in restoration of estuary habitat to assist in the development of an estuary habitat restoration strategy.

(e) **PUBLIC REVIEW AND COMMENT.**—Before the Council adopts a final estuary habitat restoration strategy, the Secretary shall publish in the Federal Register a draft of the estuary habitat restoration strategy and provide an opportunity for public review and comment.

(f) **PERIODIC REVISION.**—Using data and information developed through project monitoring and management, and other relevant information, the Council may periodically review and update, as necessary, the estuary habitat restoration strategy.

#### **SEC. 8. ESTUARY HABITAT RESTORATION PROJECT PROPOSALS.**

(a) **IN GENERAL.**—A proposed estuary habitat restoration project shall originate from a non-Federal interest, including States or other non-Federal entities, consistent with State or local laws.

(b) **REVIEW BY REGIONAL COUNCILS.**—

(1) **IN GENERAL.**—A non-Federal interest may submit a proposed estuary habitat restoration project to the appropriate Regional Council for review.

(2) **TECHNICAL ASSISTANCE.**—A Regional Council receiving a proposal from a non-Federal interest under paragraph (1) shall provide, as necessary, technical assistance to the non-Federal interest to ensure that the proposal is complete.

(3) **REVIEW.**—A Regional Council shall select for each fiscal year those proposals for estuary habitat restoration projects that the Regional Council determines are eligible to be carried out under this Act under the factors specified in section 4(b)(1) and shall transmit such proposals to the Council for further review.

(c) **CONSIDERATION BY COUNCIL.**—The Council shall review the proposed estuary habitat restoration projects transmitted to the Council by a Regional Council under subsection (b) and, based on the factors specified in section 4(b)(1), shall recommend to the Secretary a priority order for carrying out such projects. The Council's recommendation shall include a recommendation as to whether a project should be carried out by the Secretary or by another Federal department or agency under section 4(f).

#### **SEC. 9. MONITORING AND MAINTENANCE OF ESTUARY HABITAT RESTORATION PROJECTS.**

(a) **DATABASE OF RESTORATION PROJECT INFORMATION.**—The Under Secretary for Oceans and Atmosphere of the Department of Commerce, in consultation with the Secretary, shall develop and maintain an appropriate database of information concerning estuary habitat restoration projects carried out under this Act, including in-

formation on project techniques, project completion, monitoring data, and other relevant information.

(b) **MONITORING DATA STANDARDS.**—The Under Secretary for Oceans and Atmosphere of the Department of Commerce, in consultation with the Secretary, shall develop standard data formats for monitoring projects, along with requirements for types of data collected and frequency of monitoring.

(c) **REPORT.**—

(1) **IN GENERAL.**—The Secretary, in consultation with the Council, shall submit a report to Congress at the end of the third and fifth fiscal years following the date of enactment of this Act on the results of activities carried out under this Act.

(2) **CONTENTS OF REPORT.**—A report under paragraph (1) shall include—

(A) data on the number of acres of estuary habitat restored under this Act, including the number of projects approved and completed that comprise those acres;

(B) the percentage of restored estuary habitat monitored under a plan to ensure that short-term and long-term restoration goals are achieved;

(C) an estimate of the long-term success of varying restoration techniques used in carrying out estuary habitat restoration projects;

(D) a review of how the information described in subparagraphs (A) through (C) has been incorporated in the selection and implementation of estuary habitat restoration projects;

(E) a review of efforts made to maintain an appropriate database of restoration projects carried out under this Act; and

(F) a review of the measures taken to provide the information described in subparagraphs (A) through (C) to persons with responsibility for assisting in the restoration of estuary habitat.

#### **SEC. 10. FUNDING.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **ESTUARY HABITAT RESTORATION PROJECTS.**—There is authorized to be appropriated to the Secretary for estuary habitat restoration projects—

(A) \$40,000,000 for fiscal year 2001;

(B) \$50,000,000 for fiscal year 2002; and

(C) \$75,000,000 for each of fiscal years 2003 through 2005.

Such amounts shall remain available until expended.

(2) **MONITORING.**—There is authorized to be appropriated to the Under Secretary for Oceans and Atmosphere of the Department of Commerce for the acquisition, maintenance, and management of monitoring data on restoration projects carried out under this Act, \$2,000,000 for each of fiscal years 2001 through 2005. Such amounts shall remain available until expended.

(b) **SET-ASIDE FOR ADMINISTRATIVE EXPENSES OF THE COUNCIL AND REGIONAL COUNCILS.**—Not to exceed 3 percent of the amounts appropriated for a fiscal year under subsection (a)(1) or \$2,000,000, whichever is greater, may be used by the Secretary for administration and operation of the Council and Regional Councils.

#### **SEC. 11. GENERAL PROVISIONS.**

(a) **ESTUARY HABITAT RESTORATION MISSION.**—The Secretary shall ensure that restoration of estuary habitat is included as a primary mission of the Corps of Engineers under section 306 of Water Resources Development Act of 1990 (33 U.S.C. 2316).

(b) **AGENCY CONSULTATION AND COORDINATION.**—In carrying out this Act, the Secretary shall, as necessary, consult with, cooperate with, and coordinate its activities with the activities of other Federal departments and agencies.

(c) **COOPERATIVE AGREEMENTS; MEMORANDA OF UNDERSTANDING.**—In carrying out this Act, the Secretary may—

(1) enter into cooperative agreements with Federal, State, and local government agencies and other entities; and

(2) execute such memoranda of understanding as are necessary to reflect the agreements.

(d) **FEDERAL AGENCY FACILITIES AND PERSONNEL.**—Federal agencies may cooperate in carrying out scientific and other programs necessary to carry out this Act, and may provide facilities and personnel, for the purpose of assisting the Council in carrying out its duties under this Act.

(e) **APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.**—The Council and Regional Councils shall not be considered advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

(f) **IDENTIFICATION AND MAPPING OF DREDGED MATERIAL DISPOSAL SITES.**—In consultation with appropriate Federal and non-Federal public entities, the Secretary

shall undertake, and update as warranted by changed conditions, surveys to identify and map sites appropriate for beneficial uses of dredged material for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in order to further the purposes of this Act.

(g) STUDY OF BIOREMEDIATION TECHNOLOGY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, with the full participation of the estuarine scientific community, shall begin a 2-year study on the efficacy of bioremediation products.

(2) REQUIREMENTS.—The study shall—

(A) evaluate and assess bioremediation technology—

(i) on low-level petroleum hydrocarbon contamination from recreational boat bilges;

(ii) on low-level petroleum hydrocarbon contamination from stormwater discharges;

(iii) on nonpoint petroleum hydrocarbon discharges; and

(iv) as a first response tool for petroleum hydrocarbon spills; and

(B) recommend management actions to optimize the return of a healthy and balanced ecosystem in response to improvements in the quality and character of estuarine waters.

#### PURPOSE AND SUMMARY

On May 12, 1999, Representative Gilchrest (MD) and others introduced H.R. 1775, the Estuary Habitat Restoration Partnership Act of 1999, which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources.

The purpose of H.R. 1775 is to promote the restoration of one million acres of estuary habitat by 2010 by further improving partnerships among Federal, state, local, private and non-profit interests, and by developing a national estuary restoration strategy. The bill authorizes \$315 million over five years for the Secretary of the Army to carry out estuary habitat restoration projects. The bill creates a National Estuary Habitat Restoration Council (the Council), and seven Regional Councils. The Council, with Federal and regional representation, will develop a coordinated national estuary restoration strategy, to be followed by the development of regional strategies by the Regional Councils. The Council forwards eligible estuary habitat restoration projects, as determined by the Regional Councils, and makes priority recommendations to the Secretary of the Army for implementation. The bill also authorizes an additional \$10 million over five years for the National Oceanic and Atmospheric Administration (NOAA) to develop and create monitoring information on restoration of estuaries.

#### BACKGROUND AND NEED FOR LEGISLATION

##### *Overview of estuaries and coastal areas*

Estuaries are partially enclosed water bodies where freshwater from land drainage through rivers or streams flows into an open sea or the ocean. Estuaries are also called inlets, bays, harbors, or sounds, and their habitats include shallow open waters, fresh and saltwater marshes, beaches, tidal pools, and wooded swamps, among others. In recent years, Congress, NOAA and the Environmental Protection Agency (EPA) have recognized that the Great Lakes include areas with habitats and characteristics similar to saltwater estuaries.



Estuaries and their surrounding coastal areas provide some of the most diverse and ecologically and economically productive habitat in the country. Many wildlife populations, such as migratory birds, commercially valuable fish species, shellfish and other species depend on estuarine environments. Estuaries also support important commercial activities, provide the primary water supply for many areas, and perform many other essential ecological and economic functions for the U.S. For example, estuaries provide habitat for more than 75 percent of America's commercial fish catch at some point during their life cycle, and fisheries dependent on coastal waters were worth more than \$1.9 billion in 1990 (excluding Alaska). Coastal industries, including fishing, boating and tourism, provide more than 28 million jobs, and coastal recreation and tourism generate approximately \$8 to \$12 billion annually. More than 70 percent of Americans visit the coast every year. In addition, more than 110 million people currently live in coastal regions, and this number is expected to reach 127 million by 2010.

Increasing population growth and development have imposed significant stress on our estuaries. Competing and increasing demands on estuaries have led to water quality problems arising from increased nonpoint source pollution from stormwater and agricultural runoff, wastewater discharges, industrial pollution, and commercial and recreational waste. The nation's estuaries must overcome increasing eutrophication from over-enrichment of nutrients, contamination from toxic substances and pathogens, loss of habitat, declines in fish and wildlife populations, and intrusion by non-native species. The 1996 National Water Quality Inventory reported that almost 40 percent of the surveyed estuaries are impaired (i.e. not fully meeting one or more designated uses).

#### *Current efforts to restore and maintain estuaries*

Among the various federal, state, local and private efforts that support habitat restoration, several focus specifically on estuaries, including the National Estuary Program (NEP).

In 1987, Congress authorized the creation of the NEP to promote comprehensive planning for long-term protection of our estuaries through collaborative voluntary efforts of federal, state, local, non-profit and private interests. Stakeholders involved include local governments, federal officials, private and non-profit interests, industrial, recreational or other user groups, and academic or scientific experts. The goal is for the stakeholders, as equal partners, to develop and implement long-term management plans, called Comprehensive Conservation and Management Plans (CCMPs), with technical assistance and grants provided by EPA.

Of the roughly 130 estuaries in the U.S., 28 have been incorporated into the NEP. Of these 28, 21 have begun implementation, and seven are still in the development stage. An estimated \$50 billion will be needed to implement all 28 CCMPs. Although authorization for the NEP expired in FY 1991, Congress has continued to appropriate funds (approximately \$225 million to date). Additional Clean Water Act funding is available for implementation of CCMPs through the Clean Water State Revolving Fund loans, non-point source grants under Section 319, and state water program grants under Section 104(b)(3).

## DISCUSSION OF COMMITTEE BILL AND SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This bill may be cited as the “Estuary Restoration Act of 2000.”

*Section 2. Purposes*

This section establishes the purposes of the Act which are: to promote the restoration of one million acres of estuary habitat by 2010, as well as the restoration of fresh water estuary habitat; to develop strategies to obtain national and regional objectives for restoring estuary habitat; to foster coordination of Federal, state, and community estuary habitat restoration efforts; to establish restoration partnerships among public agencies at all levels of government and between the public and private sectors; to promote more efficient financing of restoration activities; and, to develop and enhance monitoring and research capabilities to ensure that restoration efforts are based on sound scientific understanding.

*Section 3. Definitions*

This section defines the following key terms in the bill: Council, degraded estuary habitat, estuary, estuary habitat, estuary habitat restoration activity, estuary habitat restoration project, estuary habitat restoration strategy, estuary management or habitat restoration plan, fresh water estuary, Great Lakes region, Gulf region, Middle Atlantic region, Northeast region, Northwest region, Regional Council, Secretary, Southeast region, Southwest region, and State.

In order to increase the geographic scope and types of projects eligible to be implemented, an amendment in the nature of a substitute was adopted by the Subcommittee on Water Resources and Environment that made definitional changes to the introduced bill. The definition of estuary now includes fresh water estuaries, and the Great Lakes region was added, thereby allowing Great Lakes estuary restoration projects to be implemented. In addition, the U.S. Territories and the District of Columbia were added to the appropriate regions.

*Section 4. Estuary Habitat Restoration Program*

This is a new section from the introduced bill that was added to modify and clarify the process by which estuary habitat restoration projects are selected and implemented. The introduced bill required the seven Regional Councils to forward eligible projects to the Council, where the Council would select and provide financial assistance to projects. The bill as reported out of Committee, however, modified this decision-making process in order to address a constitutional issue regarding the Appointments Clause, and to further clarify how projects are reviewed, recommended, selected and implemented.

In the introduced bill, the Council, composed of Federal and non-federal members, had significant decision-making and voting authority regarding determining eligibility for funds, and thus may have violated the Appointments Clause. The non-federal Council members were to be appointed by the Secretary of the Army, who is not a “head of a department” (in contrast to the Secretary of De-

fense), and the Executive's appointment authority may have been unduly restricted as the selection of the non-federal members was limited to representatives from the Regional Councils only.

To address the Appointments Clause issue and to clarify the decision-making process, this section was included to provide the Secretary of the Army with the authority to select and carry out estuary habitat restoration projects. However, language is included to ensure the Secretary not only consults with the Council, but also takes into account the Council's recommendations for the priority order of selecting and implementing projects, as well as if the project should be delegated to another agency for implementation.

The Secretary of the Army is directed to take into account other recommended factors, as well, when selecting projects, including if the project: meets criteria specified in the national estuary habitat restoration strategy developed by the Council; has technical merit and is feasible; increases coordination and cooperation of federal, state, and local government agencies, as well as fosters public-private partnerships; and, includes a monitoring plan that will help achieve restoration goals. Additional factors for consideration are if the non-federal interests proposing the project will have the resources and authority needed to carry out and maintain the project, and any other factors that the Secretary determines are reasonable and necessary.

To promote improved coordination of estuary habitat restoration and efficiency of financing projects, the Secretary of the Army is directed to give higher priority to those projects that are already part of an existing estuary management or habitat restoration plan, or to projects in watersheds in which programs are being carried out to address sources of pollution or other activities that may re-impair the restored habitat. Finally, the Secretary may not select a project if it constitutes mitigation required under any federal or state law for the adverse effects of an activity regulated or otherwise governed by federal or state law, or restoration for natural resource damages required under any federal or state law. The Secretary has authority to take interim actions to implement projects, pending completion of the national estuary habitat restoration strategy.

This section also establishes the cost-sharing required for each project. The non-federal share of a project must include necessary lands, easements, rights-of-way and relocations, and may include services or any other form of in-kind contribution that the Secretary determines to be an appropriate contribution equal to the monetary amount required for the non-federal share. A non-profit entity may serve as the non-federal interest for a project.

#### *Section 5. Establishment of Estuary Habitat Restoration Council*

This section establishes the national Estuary Habitat Restoration Council. The Council's purpose is to review project proposals forwarded by the Regional Councils and make recommendations on projects and priorities to the Secretary, and to develop, periodically review, and update as necessary a national strategy to restore estuary habitat. The Council has 13 members including the Secretaries of the Army, the Interior (acting through the Director of the Fish and Wildlife Service), Agriculture, Transportation, the Department

of Commerce's Undersecretary for Oceans and Atmosphere, the Administrator of the EPA, and one representative from each of the seven Regional Councils.

This section also delineates the Council members' appointment and terms of service, specifies how to handle vacancies, prohibits members from receiving compensation, establishes a chairperson, authorizes the Council to convene and establish operating procedures, and requires Council meetings to be open to the public.

#### *Section 6. Establishment of regional councils*

This section establishes seven Regional Councils under the National Council. The Regional Councils are to represent the Gulf, Great Lakes, Middle Atlantic, Northeast, Northwest, Southeast, and Southwest regions of the United States.

The Regional Councils' primary duties are to develop, review, and update as necessary, regional estuary habitat restoration strategies consistent with the national strategy developed by the Council, and to solicit, evaluate and forward eligible projects to the Council.

#### *Section 7. Estuary habitat restoration strategy*

This section directs the Council, in consultation with state and other non-federal entities, to develop an estuary habitat restoration strategy that will serve as the national framework for restoring estuaries. The strategy is intended to help maximize the benefits derived from estuary habitat restoration projects selected for implementation, and to foster coordination of federal and non-federal efforts to restore estuary habitat.

#### *Section 8. Estuary habitat restoration project proposals*

This section incorporates Subcommittee changes that clarify the process by which projects are developed, reviewed, and forwarded to the Secretary of the Army for selection. Specifically, a project proposal must originate from a non-federal interest, such as a state or other non-federal entity, and be submitted to the appropriate Regional Council for review. The Regional Councils will review projects and forward those that are eligible to receive assistance (based on the factors the Secretary uses to select projects) to the Council for further review. The Regional Councils are also directed to provide technical assistance to non-Federal interests that propose projects.

The Council reviews projects forwarded by the Regional Councils and recommends a priority order for selection to the Secretary. The Council also should include recommendations as to whether the Secretary or another federal agency should carry out a project.

#### *Section 9. Monitoring and maintenance of estuary habitat restoration projects*

This section directs the Undersecretary for Oceans and Atmosphere of the Department of Commerce, in consultation with the Secretary of the Army, to develop and maintain a database with information on estuary habitat restoration projects carried out under this bill. The Undersecretary also will develop monitoring standards for data types and format, as well as for monitoring frequency.

The Secretary of the Army is also directed to work with the Council and submit reports to Congress on the results of activities carried out under this bill.

#### *Section 10. Funding*

This section authorizes \$315 million total over five years for the Secretary of the Army to carry out estuary habitat restoration projects, or \$40 million for fiscal year 2001, \$50 million for fiscal year 2002, and \$75 million a year for fiscal years 2003 through 2005. Of the annual authorizations, the Secretary may use no more than 3 percent, or \$2 million, whichever is greater, for administration and operation of the Council and Regional Councils.

This section also authorizes \$10 million total through fiscal years 2001 through 2005, or \$2 million a year, for NOAA to acquire, maintain, and manage monitoring data on projects implemented under this bill.

#### *Section 11. General provisions*

This section directs the Secretary of the Army: to ensure that restoration of estuary habitat is included as part of its environmental protection mission as directed in section 306 of the Water Resources Development Act of 1990: to consult, cooperate, and coordinate with other federal agencies in carrying out this legislation; and, to enter into cooperative agreements and memoranda of understanding with other federal, state, and local agencies, as necessary, to implement this bill. It also authorizes federal agencies to provide facilities and personnel to the Council, and clarifies that the Federal Advisory Committee Act does not apply to any councils established by this bill.

This section also includes language adopted at the full Committee markup that requires the Secretary of the Army to undertake surveys to identify and map sites appropriate for beneficial uses of dredged material for habitat restoration, and language that requires the EPA Administrator to conduct a study on bioremediation in the cleanup of oil spills in estuaries.

The Committee is concerned that bioremediation technology, particularly that which has the combined characteristics of a biodegradable, buoyant absorbent as well as a bioremediant, has received minimal support in the federal research effort for combating oil spills and hydrocarbon discharges from marine vessels and non-point sources. Consequently, little federal data are available to support informed decisions on the application of this relatively inexpensive but valuable technology in combating hydrocarbon releases into our nation's waters.

The Administrator shall consider for this study those products that are listed on EPA's National Contingency Plan (NCP) Product Schedule under the Bioremediation Agents category that have already completed the required testing for the NCP listing.

Through directing this study, the Committee is hopeful that the federal agencies can develop the data necessary to make appropriate decisions in this important arena as well as develop policies that support informed stewardship of the environment via the use of bioremediation technology.

## HEARINGS

On July 13, 1999, the Subcommittee on Water Resources and Environment held a hearing on "Estuaries and Coastal Water Quality Legislation," which included H.R. 1775, and several other coastal and estuary bills. The hearing included testimony from Members of Congress, including Representative Saxton (NJ), Representative Shays (CT), Representative Lowey (NY), Representative DeLauro (CT), Representative Lazio (NY), Representative Ackerman (NY), Representative Deutsch (FL), Representative Ros-Lehtinen (FL), Representative Johnson (CT), Representative Shaw (FL), and Representative Forbes (NY). Testimony was heard from federal agencies, including Mr. Michael Davis of the U.S. Army Corps of Engineers, Ms. Dana Minerva of the U.S. Environmental Protection Agency, and Ms. Sally Yozell of the National Oceanic and Atmospheric Administration. Testimony was also heard from several nonprofit organizations, including Restore America's Estuaries, The Nature Conservancy, Coast Alliance and Coastal States Organization.

## COMMITTEE CONSIDERATION

On November 8, 1999, the Subcommittee on Water Resources and Environment adopted an amendment in the nature of a substitute offered by Representative Boehlert, and favorably reported the amended bill by voice vote. The amendment amended Title I to authorize the Secretary of the Army, in consultation with the Council, to select and carry out habitat restoration projects (or delegate authority to other federal agencies to carry out projects), with a 35 percent local cost share. The amendment clarified the roles of the national and regional councils in reviewing and recommending estuary habitat restoration projects. The amendment expanded the scope of the bill to include the Great Lakes and U.S. Territories. The amendment deleted Title II of the bill that reauthorized the Chesapeake Bay Program, because of the Committee's intent to address the reauthorization of the Chesapeake Bay Program through additional legislation.

On March 16, 2000, the Committee adopted an en bloc amendment, and ordered the bill reported to the House by voice vote. The en bloc amendment made technical and clarifying changes, required the Secretary of the Army to undertake surveys to identify and map sites appropriate for beneficial uses of dredged material for habitat restoration, and required the EPA Administrator to conduct a study on bioremediation in the cleanup of oil spills in estuaries.

## ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 1775 reported.

## COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## COST OF LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

## COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1775.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1775 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 27, 2000.*

Hon. BUD SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure, House  
of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1775, the Estuary Restoration Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 1775—Estuary Restoration Act of 2000*

Summary: H.R. 1775 would establish the Estuary Habitat Restoration Council, consisting of representatives from multiple federal agencies, that would develop a strategy for restoring estuary habitats and provide financial assistance to nonfederal entities for restoration projects. The bill would authorize the appropriation of

\$315 million over the 2001–2005 period to the Corps of Engineers (Corps) for that purpose. In addition, the bill would authorize the appropriation of \$10 million over the five-year period to the National Oceanic and Atmospheric Administration (NOAA) to collection information to monitor the effectiveness of estuary restoration projects. Assuming appropriation of the specified amounts, CBO estimates that implementing the new program would increase federal spending by \$235 million over the 2001–2005 period. In addition, CBO estimates that directing the Environmental Protection Agency to conduct a study on bioremediation technology would cost \$1 million, assuming appropriation of the necessary amount. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 1775 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any expenditures made by state and local governments to satisfy the matching requirements of grants authorized by this bill would be voluntary.

Estimated cost to the Federal Government: CBO estimates that implementing the bill would result in additional outlays of \$236 million over the 2001–2005 period, assuming appropriation of the amounts authorized for each year. No amounts were provided to the Corps or to NOAA in 2000 for funding or monitoring estuary restoration projects. The pattern of spending under this bill was estimated based on historical spending patterns for similar activities. The estimated budgetary impact of H.R. 1775 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level .....	0	43	52	77	77	77
Estimated Outlays .....	0	8	22	52	72	82

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: This bill would impose no intergovernmental or private-sector mandates as defined in UMRA. Any expenditures made by state and local governments to satisfy the matching requirements of grants authorized by this bill would be voluntary.

Previous CBO estimate: On October 13, 1999, CBO transmitted a cost estimate for S. 835, the Estuary Habitat Restoration Partnership Act of 1999, as ordered reported by the Senate Committee on Environment and Public Works on September 29, 1999. In addition to authorizing a program for restoring estuary habitats that is similar to the program authorized under this legislation, S. 835 would reauthorize the Chesapeake Bay program for five years. Differences in the two estimates reflect the cost of implementing that additional provision of S. 835.

Estimate prepared by: Federal Costs: Megan Carroll and Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Shelley Finlayson; Impact on the Private Sector: Patrice Gordon.



Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

